THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.15546 of 1996

Date 21.09.2005

Between:

G.Appa Rao, S/o Chenappanna,
E.No.101275, Visakhapatnam Steel Plant, R/o Patha Ayyanapalem,
Peddagantyada, Vishakaptnam.

..... PETITIONER

AND

Chairman cum MD, Visakhapatnam Steel Plant, Visakhapatnam & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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O R D E R:

The proceedings of the third respondent dated 10.06.1996, whereby the petitioner was imposed the punishment of reduction to a lower grade and was consequently posted from S-IV to S-III Grade and his scale of pay reduced from Rs.3200 to Rs.2190-50-2540-55-2925, is impugned in this writ petition.

Facts, to the extent necessary for this writ petition, are that the petitioner joined the Visakhapatnam Steel Plant (hereinafter referred to as 'the Company') on 01.09.1982 as a driver under the displaced persons category. On the intervening night of 18/19.10.1994, the petitioner is said to have indulged in theft of copper cables and to have been caught red-handed by C.I.S.F.

personnel and surrendered to Kiramanapalem police station on 19.10.1994. The petitioner was produced before the Judicial First Class Magistrate, Gajuwaka and was placed in judicial custody. The petitioner was suspended from service on 19.10.1994 and a charge sheet was issued on 22.10.1994 calling upon the petitioner to submit his explanation thereto. The charge alleged against the petitioner was that he was carrying copper cables belonging to the Company without valid permission from the competent authority. A crime in C.C.No.96 of 1994 was registered by P.S.Steels (Crime) Visakhapatnam and during the pendency of the proceedings before the VIII Metropolitan Magistrate, Visakhapatnam, Gajuwaka, the present writ petition was filed by the petitioner.

The petitioner submitted his explanation, to the charge memo dated 22.10.1994, denying the allegations. An Enquiry Officer was appointed on 01.02.1995. On the ground that the Enquiry Officer did not proceed with the matter, petitioner is said to have filed W.P.No.24941 of 1995, wherein he sought stay of the departmental proceedings. This Court, by order dated 12.04.1996, disposed of the writ petition directing the respondents to complete the enquiry within the stipulated period. The enquiry was completed and a copy of the enquiry report was sent to the petitioner on 17.05.1996 receipt of which was acknowledged by the petitioner on 20.05.1996. Subsequent thereto, the impugned order of punishment dated 10.06.1996 came to be passed, whereby the petitioner was imposed the punishment of reduction to a lower grade.

Sri V.Ajay Kumar, learned counsel for the petitioner, contends that the impugned order of punishment is liable to be set aside on the following grounds:

1. No show cause notice was issued to the petitioner proposing punishment and punishment was imposed straightaway contrary to the judgment of the Supreme Court in **UNION OF INDIA V. MOHD. RAMZAN KHAN**, which was approved by the Constitution Bench of the Supreme Court in **MANAGING DIRECTOR, ECIL, V. B.KARUNAKAR**;

2. The Enquiry Officer ought not to have proceeded with the departmental enquiry during the pendency of criminal

proceedings;

3. The petitioner was acquitted in the criminal case on 23.06.1996 on the self-same charges and in view of the law laid down in **M. PAUL ANTHONY, CAPT. V. BHARAT GOLD MINES LTD**., the impugned order of punishment is liable to be set aside.

Sri V.Ravindra Rao, learned standing counsel appearing for the respondent-Company, would submit that the rules and regulations of the Company do not provide for a show cause notice being issued with regard to the proposed punishment. Learned counsel would submit that in compliance with the law laid down in Karunakar's Case (2 supra), on completion of the enquiry proceedings, a copy of the enquiry report was furnished to the petitioner, vide letter dated 17.05.1996, which was received by the petitioner on 20.05.1996. It was only three weeks thereafter that the impugned order of punishment came to be passed. Learned counsel would submit that since the enquiry report was furnished, the petitioner could have submitted his objections to the enquiry report, in which event, the disciplinary authority would have considered those objections before passing the order of punishment. Learned Standing counsel would further submit that the petitioner never raised any objections before the enquiry officer nor did he seek postponement of the departmental proceedings on the ground that criminal proceedings are pending and, in any event, such a challenge made in W.P.M.P.No.34131 of 1995 in W.P.No.24941 of 1995 before this Court was not accepted and the writ petition itself was disposed of, by order dated 12.04.1996, directing the departmental proceedings to be completed within a stipulated period. Learned Standing counsel would submit that the disciplinary proceedings was proceeded with and action was taken in accordance with the findings of the Enquiry Officer, which in turn are based on the evidence adduced in the enquiry. The order of punishment imposed was based on the findings of the enquiry officer holding the petitioner guilty of the charges, would not stand vitiated merely on the ground that the criminal proceedings are pending on the same charges.

The Supreme Court in Capt. M. Paul Anthony's case (3 supra) held that there is no bar for continuance of departmental proceedings even when a

criminal case, on the same charges, is pending and the question as to whether departmental proceedings are to be deferred till completion of the criminal case would depend on the facts and circumstances of each case.

In the case on hand, such a request by the petitioner did not find acceptance with this Court and as against the petitioner's request to stay the departmental proceedings, this Court specifically directed that departmental proceedings be completed within a stipulated period. Challenge, to the impugned order of punishment, on the ground of pendency of criminal proceedings, is liable to the rejected.

The other ground of challenge is on the ground that the petitioner was subsequently acquitted in a criminal case on 23.06.1997. It is well settled that subsequent acquittal in a criminal case has no effect, whatsoever, on prior conviction in departmental proceedings. It is also well settled that departmental proceedings are distinct and different from that of criminal proceedings. While the charges in both the department proceedings and in a criminal case may be common, the degree of proof required and the consequences thereof differ. In any event, on the date of imposition of punishment on 10.06.1996, the petitioner had not been acquitted in the criminal case. His subsequent acquittal cannot be said to vitiate the earlier order of punishment imposed pursuant to a departmental enquiry.

The writ petition as filed is without merit and is accordingly dismissed. No order as to costs.

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21.09.2005

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